IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 24TH NOVEMBER 2006 / 3RD AGRAHAYANA 1928

Crl.MC.No. 3845 of 2006()

AGAINST THE ORDER DATED / / IN CRMP 5926/2006 IN CC.1866/2002 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED:

T.F. VARGHESE,
THOTTUSSERY HOUSE, PRESS CLUB CONOLY,
PLOT NO.18, EDAPPALLY P.O., KOCHI-24.

BY ADV. SRI.T.A.RAJAN
SRI.JAYAKUMAR C.K.

RESPONDENTS: COMPLAINANT:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. K.M. VIJAYA KUMAR, S/O. K.K.MADHAVAN,
KALLUNGAL HOUSE, LAKSHMI NIVAS, EROOR P.O.,
TRIPUNITHURA.

BY PUBLIC PROSECUTOR SRI.K.A. AKBAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3845 OF 2006

Dated this the 24th day of November, 2006

ORDER

The petitioner is an accused facing indictment in a prosecution under Sec.138 of the N.I. Act. Proceedings were initiated as early as in 2002. It has now reached the stage of defence evidence.

2. Signature in the cheque is admitted. That the cheque was drawn on a cheque leaf issued to the petitioner by his bank to operate his account is also admitted. Notice of demand, though allegedly received and acknowledged, did not evoke any response. The accused has taken up a contention that the handwriting in the cheque is not his. At the stage of defence evidence, the petitioner wanted the cheque to be sent to the expert for examining the handwriting in the cheque. The learned Magistrate by the impugned order did not choose to invoke his discretion under Sec.254(2) of the Cr.P.C. to summon the witness and proceeded to dismiss the said petition by the impugned order.

3. The petitioner claims to be aggrieved by the

impugned order rejecting the prayer to send the cheque to the expert. In the facts and circumstances explained above, I am not persuaded to agree that this is a fit case the extraordinary inherent jurisdiction available to this Court under Sec.482 of the Cr.P.C. can or ought to be invoked to interrupt the progress of the case before the learned Magistrate. I shall scrupulously avoid expressing any final opinion on the contentions raised. I am satisfied that this petition can, in these circumstances, be dismissed with appropriate observations.

4. In the result, this Crl.M.C. is dismissed. I may hasten to observe that I have only intended to express the opinion that the powers under Sec.482 of the Cr.P.C. need not be invoked. The petitioner shall be at liberty, if necessary, to challenge the impugned order also along with the judgment to be passed in the prosecution by the learned Magistrate.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge